

Advisory Opinion

IECDB AO 2008-11

August 28, 2008

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on the application of post-state employment provisions and interim state positions. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

OPINION:

The Board first notes that its jurisdiction in interpreting the provisions of Iowa Code chapter 68B applies to the executive branch of state government and to political subdivisions. As such, this opinion does not apply to the legislative or judicial branches.

Iowa Code sections 68B.5A and 68B.7 place restrictions on state officials and employees from accepting certain positions in the private sector for two years after leaving state government. The level of restriction depends on what position the state official or employee held as part of state government. The question has been raised concerning whether or not serving in an interim position in state government modifies these restrictions.

We have reviewed Iowa Code chapter 68B and except as set out below, the Board does not find an exception for serving in an interim position in state government. Thus the restrictions in Iowa Code section 68B.5A and 68B.7 would apply to a state official or employee who serves in a governmental position for an interim basis.

Iowa Code section 68B.7(3) does permit a person who has served as the "workers' compensation commissioner, or a deputy thereof" to "represent a claimant in a contested case before the division of workers' compensation at any point subsequent to termination" of state service. However, this exception does not apply if the case was "pending before the division during the person's tenure as commissioner or deputy."

The Board does note that there might be a situation when an official or employee has served in a position for so short a time that to apply the restrictions in Iowa Code section 68B.5A and 68B.7 to that situation would lead to a capricious result. In such situations,

the Board will consider the amount of time spent in the position and the actual level of authority the state official or employee exercised or could exercise.

In closing, the Board encourages all state officials and employees to review the following IECDB Advisory Opinions concerning the post-state employment provisions of Iowa Code chapter 68B to obtain further guidance: 2000-43, 2002-04, 2004-17, 2005-03, 2005-12, 2005-20, 2006-16, 2007-03, 2007-04, 2008-01, and 2008-02.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

Janet Carl, Vice Chair

Gerald Sullivan

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John Walsh

Patricia Harper

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